
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

KIRK ARDELL SJODIN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM DECISION AND
ORDER DENYING MOTION TO
VACATE, SET ASIDE, OR CORRECT
SENTENCE**

Case No. 4:23-cv-00019-DN

District Judge David Nuffer

Kirk Ardell Sjodin (“Sjodin”) filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“Motion”).¹ In the Motion, Sjodin challenges his “ongoing detention” and seeks “immediate release of all records, wrongful conviction suit, suppression of charges filed,” and compensation of \$69,017,000.00.² As explained below, the Motion is DENIED because it is procedurally improper and is moot due to Sjodin’s pending direct appeal of his conviction in the Tenth Circuit Court of Appeals.

A motion under § 2255 may be filed by “[a] prisoner in custody under sentence of a court”³ Where a defendant “has not yet been convicted or sentenced” a “§ 2255 motion is therefore inappropriate and is denied.”⁴ The Motion here was filed on March 13, 2023, prior to Sjodin’s bench trial, conviction, or sentencing. Accordingly, it was procedurally premature and

¹ [Docket no. 1](#), filed March 13, 2023.

² *Id.* at 1, 12.

³ 28 U.S.C. § 2255(a).

⁴ *Dean v. United States*, No. 1:24-CV-197-TC, 2024 WL 5008825, at *1 (D. Utah Dec. 6, 2024).

improper. Prior to the Motion's filing, Sjodin previously sought similar relief under § 2255,⁵ which was denied by Judge Robert Shelby for reasons similar to the reasons explained herein.⁶ Judge Shelby's analysis included Sjodin's prior motion being filed prior to sentencing and therefore not properly brought under § 2255.⁷ The Motion is DENIED because it was filed prematurely.

"Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending."⁸ After the Motion was filed, a bench trial was held,⁹ and Findings of Fact and Conclusions of Law were entered finding Sjodin guilty of violating 18 U.S.C. § 922(g)(1).¹⁰ Sjodin was sentenced August 23, 2023¹¹ and judgment was entered August 31, 2023.¹² Currently still pending is Sjodin's direct appeal of his criminal conviction.¹³ In his Motion, Sjodin raises issues of suppression of evidence, a Brady violation, conspiracy to convict, and access to courts and law library. Sjodin's direct appeal has raised all of the issues in the Motion.¹⁴ There are no

⁵ [Docket no. 1](#) in case no. 4:23-cv-00004-RJS, filed January 10, 2023.

⁶ Order Denying Plaintiff's Motion to Vacate, Set Aside, or Correct Sentence and Motion for Summary Judgment, [docket no. 5](#) in case no. 4:23-cv-00004-RJS, filed November 1, 2023.

⁷ Order Denying Plaintiff's Motion to Vacate, Set Aside, or Correct Sentence and Motion for Summary Judgment, [docket no. 5](#) in case no. 4:23-cv-00004-RJS, filed November 1, 2023.

⁸ *United States v. Scott*, 124 F.3d 1328, 1330 (10th Cir. 1997) (quotation marks and citation omitted).

⁹ Minute Entry for proceedings held before Judge Robert J. Shelby in case no. 4:22-cr-00105-RJS-1, docket no. 175, filed April 26, 2023.

¹⁰ [Docket no. 178](#) in case no. 4:22-cr-00105-RJS-1, filed May 12, 2023.

¹¹ Minute Entry for proceedings held before Judge Robert J. Shelby in case no. 4:22-cr-00105-RJS-1, docket no. 201, filed August 23, 2023.

¹² [Docket no. 202](#) in case no. 4:22-cr-00105-RJS-1, filed May 12, 2023.

¹³ Tenth Circuit appellate case 23-4069, filed May 17, 2023.

¹⁴ *See generally* Appellate Brief with Memorandum of Points and Authorities, [docket no 53-1](#) in Tenth Circuit appellate case 23-4069, filed February 5, 2024.

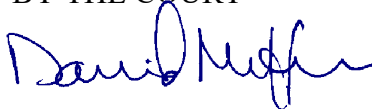
extraordinary circumstances that require § 2255 review prior to resolution of Sjodin's direct appeal. The Motion is DENIED because Sjodin's direct appeal prevents a § 2255 review.

ORDER

IT IS HEREBY ORDERED that the Motion¹⁵ is DENIED without prejudice. The Clerk of Court is directed to close this matter.

Signed April 25, 2025.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge

¹⁵ [Docket no. 1](#), filed March 13, 2023.